

AMENDED IN SENATE MAY 19, 2015

SENATE BILL

No. 741

Introduced by Senator Hill
(Coauthors: Senators Anderson and Leno)

February 27, 2015

An act to add Article 11 (commencing with Section 53166) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 741, as amended, Hill. Mobile communications: privacy.

Existing law makes it a crime to manufacture, assemble, sell, advertise for sale, possess, transport, import, or furnish to another ~~an~~ a device that is primarily or exclusively designed or intended for eavesdropping upon the communication of another, or any device that is primarily or exclusively designed or intended for the unauthorized interception of reception of communications between a cellular radio telephone, as defined, and a landline telephone or other cellular radio telephone. Existing law additionally makes it a crime to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, without the written consent of the subscriber, or to procure, obtain, attempt to obtain, or conspire to obtain, any calling pattern record or list through fraud or deceit. Existing law contains certain exemptions from these crimes for law enforcement agencies.

This bill would *require every local agency that operates cellular communications interception technology, as defined, to (1) ensure that information and data gathered through use of that technology is protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality and integrity, (2)*

implement and maintain reasonable security procedures and practices in order to protect information and data gathered through use of the technology from unauthorized access, destruction, use, modification, or disclosure, and (3) implement and maintain a usage and privacy policy, as specified, to ensure that the collection, use, maintenance, sharing, and dissemination of information and data gathered through use of the technology is consistent with respect for an individual's privacy and civil liberties. The bill would prohibit a local agency from acquiring or using cellular communications interception technology; as defined, unless that acquisition or use is approved by a resolution or ordinance adopted by its legislature body at a regularly scheduled public meeting of the legislative body at which members of the public are afforded a reasonable opportunity to comment. The bill would require that the resolution or ordinance set forth the policies of the local agency as to authorized uses of cellular communications interception technology, and as to the use, protection from unauthorized disclosure, and disposal of data obtained through that technology. If described above in (1), (2), and (3). The bill would require that the local agency make the usage and privacy policy available in writing and if the local agency maintains an Internet Web site, the bill would require the agency to conspicuously post these the usage and privacy policies on that site. The bill would, in addition to any other sanctions, penalties, or remedies provided by law, authorize an individual who has been harmed by a violation of these provisions to bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 11 (commencing with Section 53166) is
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

4
5 Article 11. Cellular Communications Interception

6
7 53166. (a) For purposes of this article, the following terms
8 have the following meanings:

1 (1) “Cellular communications interception technology” means
2 any device that intercepts mobile telephony calling information
3 or content, including an international mobile subscriber identity
4 catcher or other virtual base transceiver station that masquerades
5 as a cellular station and logs mobile telephony calling information.

6 (2) “Local agency” means any city, county, city and county,
7 special district, authority, community redevelopment agency, or
8 other political subdivision of the state, and includes every county
9 sheriff and city police department.

10 (b) *Every local agency that operates cellular communications*
11 *interception technology shall do all of the following:*

12 (1) *Ensure that information and data gathered through the use*
13 *of cellular communications interception technology is protected*
14 *with reasonable operational, administrative, technical, and*
15 *physical safeguards to ensure its confidentiality and integrity.*

16 (2) *Implement and maintain reasonable security procedures*
17 *and practices in order to protect information and data gathered*
18 *through the use of cellular communications interception technology*
19 *from unauthorized access, destruction, use, modification, or*
20 *disclosure.*

21 (3) *Implement and maintain a usage and privacy policy in order*
22 *to ensure that the collection, use, maintenance, sharing, and*
23 *dissemination of information and data gathered through the use*
24 *of cellular communications interception technology is consistent*
25 *with respect for an individual’s privacy and civil liberties. This*
26 *usage and privacy policy shall be available in writing, and, if the*
27 *local agency has an Internet Web site, the usage and privacy policy*
28 *shall be posted conspicuously on that Internet Web site. The usage*
29 *and privacy policy shall, at a minimum, include all of the following:*

30 (A) *The authorized purposes for using cellular communications*
31 *interception technology and for collecting information or data*
32 *using that technology.*

33 (B) *A description of the employees who are authorized to use,*
34 *or access information or data collected through the use of, cellular*
35 *communications interception technology. The policy shall identify*
36 *the training requirements necessary for those authorized*
37 *employees.*

38 (C) *A description of how the use of cellular communications*
39 *interception technology will be monitored to ensure compliance*

1 with all applicable privacy laws and a process for periodic system
2 audits.

3 (D) A description of reasonable measures that will be used to
4 ensure the accuracy of information or data gathered through the
5 use of cellular communications interception technology and a
6 process to correct errors.

7 (E) A description of how the local agency will comply with the
8 security procedures and practices implemented and maintained
9 pursuant to paragraph (2).

10 (F) The length of time information or data gathered through
11 the use of cellular communications interception technology will
12 be stored or retained, and the process the local agency will utilize
13 to determine if and when to destroy stored or retained information
14 or data.

15 (G) The official custodian, or owner, of information or data
16 gathered through the use of cellular communications interception
17 technology and which employees have the responsibility and
18 accountability for implementing this subdivision.

19 (H) The purpose of, and process for, sharing or disseminating
20 information or data gathered through the use of cellular
21 communications interception technology with other persons. The
22 policy shall also identify how the use or further sharing or
23 dissemination of that information or data will be restricted in order
24 to ensure respect for an individual's privacy and civil liberties.

25 ~~(b)~~

26 (c) No local agency may acquire or use cellular communications
27 interception technology unless approved by its legislative body by
28 adoption of a resolution or ordinance authorizing that acquisition
29 or use.

30 ~~(e)~~

31 (d) The legislative body of a local agency shall not approve a
32 resolution or ordinance authorizing the acquisition or use of cellular
33 communications interception technology, unless the resolution or
34 ordinance is adopted at a regularly scheduled public meeting of
35 the legislative body at which members of the public are afforded
36 a reasonable opportunity to comment upon the proposed resolution
37 or ordinance. The resolution or ordinance shall set forth the policies
38 of the local agency as ~~to the circumstances when cellular~~
39 ~~communications interception technology may be employed, and~~
40 ~~usage and privacy policies, which shall include, but need not be~~

1 ~~limited to, how data obtained through use of the technology is to~~
2 ~~be used, protected from unauthorized disclosure, and disposed of~~
3 ~~once it is no longer needed. required by paragraph (3) of~~
4 ~~subdivision (b).~~

5 ~~(d) If the local agency maintains an Internet Web site, the~~
6 ~~cellular communications interception technology usage and privacy~~
7 ~~policies shall be posted conspicuously on that site.~~

8 *(e) In addition to any other sanctions, penalties, or remedies*
9 *provided by law, an individual who has been harmed by a violation*
10 *of this section may bring a civil action in any court of competent*
11 *jurisdiction against a person who knowingly caused that violation.*
12 *The court may award a combination of any one or more of the*
13 *following:*

14 *(1) Actual damages, but not less than liquidated damages in the*
15 *amount of two thousand five hundred dollars (\$2,500).*

16 *(2) Punitive damages upon proof of willful or reckless disregard*
17 *of the law.*

18 *(3) Reasonable attorney's fees and other litigation costs*
19 *reasonably incurred.*

20 *(4) Other preliminary and equitable relief as the court*
21 *determines to be appropriate.*